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OCT 27 2008

OFFICE OF PETITIONS

In re Application of :
Hamilton et al. :
Application No. 09/851,230 : LETTER REGARDING
Filed: May 8, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. MORPS.001AUS :

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" filed July 21, 2008. Pursuant to their duty of good faith and candor to the Office, applicants disclose that the patent term adjustment indicated on the initial determination of patent term adjustment may be incorrect.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero **(0)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On July 10, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 107 days. Applicants point out that a period of reduction should have been entered for the filing of a supplemental information disclosure statement (IDS) on July 21, 2008.

Applicants are correct. 37 CFR 1.704 (c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, in response to the final rejection mailed April 23, 2007, on August 23, 2007, applicants filed a request for continued examination (RCE). Pursuant to 37 CFR 1.704(b), a period of reduction of 31 days was entered for the filing of the RCE. A review of the record confirms that thereafter, on September 26, 2007, applicants filed a supplemental IDS. The IDS was not expressly requested by the examiner and did not include a § 1.704(d) statement. Accordingly, pursuant to § 1.704(c)(8), an additional period of reduction of 34 days should have been entered.

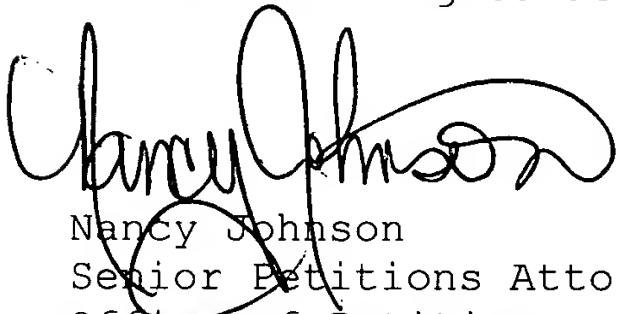
Moreover, a review of the record reveals a further basis for entry of a period of reduction. In response to the non-final Office action mailed October 5, 2006, on October 27, 2006, applicants filed a response. Thereafter, on March 6, 2007, applicants filed a request to correct inventorship. The record does not support a conclusion that the request to correct inventorship was expressly requested by the examiner. Pursuant to § 1.704(c)(8), an additional period of reduction of 130 days should have been entered for the filing of the request to correct inventorship on March 6, 2007.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the notice of allowance is ZERO (0) days.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of revised PALM Screen

Day : Friday
Date: 10/17/2008

PALM INTRANET

Time: 21:33:26

PTA Calculations for Application: 09/851230

Application Filing Date:	05/08/2001	PTO Delay (PTO):	494
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	387
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-164		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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